

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DION L. HAYES,

Defendant.

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8:07CR10

MEMORANDUM AND ORDER

This matter is before the court for initial review of the defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Filing No. 25. Amended motion at, Filing No. 29. Under the *Rules Governing Section 2255 Proceedings for the United States District Courts* ("§ 2255 Rules"), a defendant's § 2255 motion is subject to initial review by the court:

If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

§ 2255 Rule 4(b).

The defendant pled guilty to possession with the intent to distribute more than 5 grams of a substance containing cocaine base. Filing No. 17. In his amended § 2255 motion, the defendant alleges he was not given credit for the time he served in the Douglas County Correction Center. Filing No. 29 at 1. The defendant claims he should have four months instead of four days of credit time served. *Id.*

It does not plainly appear from the motion and the record of prior proceedings that

the defendant is excluded from relief. Accordingly, the court finds that the United States should file an answer, motion, or other response, together with a supporting brief.

IT IS ORDERED:

1. The United States shall file an answer, motion, or other response to the defendant's § 2255 motion within 30 days from the date of this order;
2. The defendant may reply within 30 days thereafter.

DATED this 1st day of July, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge